IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 3685 of 2007()

ST.1273/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR
.....

PETITIONER: ACCUSED

THE QUILON CO-OPERATIVE SPINNING MILLS LTD., KARAMCODE-691 579, KOLLAM, REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENTS: COMPLAINANT & STATE
----

1. **THE ENFORCEMENT OFFICER, EMPLOYEES PROVIDENT FUND ORGANIZATION, DISTRICT OFFICE, KOLLAM.**

2. **STATE OF KERALA - REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ
SRI. N.N.SUGUNAPALAN, SC., P.F.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/12/2007, ALONG WITH CRMC NO. 3686 OF 2007 AND CONNECTED THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.Nos. 3685, 3686, 3687, 3688, 3689,
3690, 3691, 3693, 3694, 3698, 3699
3700, 3703, 3704, 3706, 3707
3708 & 3711 of 2007

- -

Dated this the 12th day of December, 2007

O R D E R

The petitioner herein is the first accused in various prosecutions initiated by the first respondent. Altogether there are two accused persons. The second accused is the Managing Director of the petitioner herein at the relevant time. The crux of th allegations in all these prosecutions initiated by the first respondent against the petitioner is that there has been failure to pay amounts which are liable to be paid under Section 6 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Consequently, it is alleged that the petitioner as also the then Managing Director are liable to be prosecuted under Section 14A of the Employees Provident Fund and Miscellaneous Provisions Act.

2. The petitioner has now come to this Court with these petitions to quash various prosecutions that have been launched

against the petitioner and the co-accused invoking the powers under Section 482 Cr.P.C. As the same question arises in all these Crl.M.Cs., I am proceeding to dispose of the same by this common order.

3. What is the ground? The short ground urged by the learned counsel for the petitioner to justify the invocation of the jurisdiction under Section 482 Cr.P.C. is that this Court by Annex.2 order i.e. order dt. 27.5.2005 in Writ Petition No.14694 of 2005 had worked out an arrangement enabling the petitioner to make payment of the amounts due in 12 equal instalments. It is the case of the petitioner that the amounts due as per Annex.2 order have all been paid and discharged. In as much as the liabilities stand discharged by such payments made on the strength of Annex.2, it is contended that the prosecution under Section 14(1)(A) of the Employees Provident Fund and Miscellaneous Provisions Act are all liable to be quashed.

4. I am afraid, this contention cannot be accepted. It is by now trite that subsequent discharge of the liability will not in any way

enable an employer to claim absolution from liability under Section 14 (1)(A) r/w. Section 6 of the Employees Provident Fund and Miscellaneous Provisions Act. The petitioner, posed with the threat of coercive proceedings for recovery of amounts due under the liability towards Employees Provident Fund organisation under the Act, had come before this Court and had prayed for time to make the payments. That request was ultimately accepted and payment in instalments was allowed with the rider that if such payment is made, no coercive proceedings for recovery should be taken. By no stretch of imagination can it be held that the said Annex.2 order can be used by the petitioner to claim immunity from prosecution under Section 14(1) (A) of the Act. Annex.2 order does not at all refer to the liability of the petitioner to face prosecution under Section 14(1)(A) of the Act. The indulgence shown by the court to grant the petitioner time to make the payment and to avoid steps for recovery cannot entitle the petitioner to claim quashing of criminal prosecutions under Section 14 (1)(A) r/w. S.6 of the Act. There is nothing in Annex.2 which can

convey to the court that this Court when it passed the said Annex.2 order wanted to save the petitioner of the liability to face prosecution. The prayer to quash the proceedings cannot therefore succeed.

5. The learned counsel for the petitioner then submits that in all these prosecutions the learned Magistrate is insisting that the present Managing Director representing the petitioner/first accused must appear in person. No order has been placed before court which shows that there has been any such insistence on the part of the court. I need only mention that the petitioner shall be entitled to press into service Section 305 Cr.P.C. If the petitioner makes appropriate arrangement to represent the company as contemplated under Section 305 Cr.P.C., I have no reason to assume that the learned Magistrate, overlooking the mandate of Section 305 Cr.P.C., would insist on any such personal appearance. The petitioner can make appropriate application under Section 305 Cr.P.C. and solicit orders from the Court. Needless to say, if the petitioner is dissatisfied with the order, appropriate proceedings to challenge the orders can be resorted to.

6. With the above observations these petitions are dismissed.

(R. BASANT)
Judge

tm